

UNITED STATES OF AMERICA
UNITED STATES COAST GUARD vs.
LICENSE NO. 519 621 AND MERCHANT MARINER'S DOCUMENT
Issued to: Michael L. Fuehr

DECISION OF THE VICE COMMANDANT ON APPEAL
UNITED STATES COAST GUARD

2283

Michael L. Fuehr

This appeal has been taken in accordance with Title 46 U.S.C. 239(g) and 46 CFR 5.30-1.

By order dated 28 January 1980, an Administrative Law Judge of the United States Coast Guard at St. Louis, Missouri, admonished Appellant upon finding him guilty of misconduct. The specification found proved alleges that while serving as Second Mate on board the United States M/V W.W. HOLLOWAY under authority of the license above captioned, on or about 17 September 1979, Appellant wrongfully departed the port of Milwaukee, WI, for Chicago, IL, and traversed Lake Michigan without the required endorsement on his license to wit: first class pilot upon the waters of Lake Michigan.

The hearing was held at Chicago, IL on 18 October 1979.

At the hearing, Appellant was represented by professional counsel and entered a plea of not guilty to the charge and specification.

The Investigating Officer introduced in evidence the testimony of one witness and three documents.

Appellant did not testify, call witnesses or introduce any documents.

After the hearing, the Administrative Law Judge rendered a written decision in which he concluded that the charge and specification had been proved. He then served a written order of admonition on Appellant.

The entire decision was served on 28 January 1980. Appeal was timely filed on 9 February 1980, and perfected on 25 June 1980.

Because of the disposition of the appeal no Findings of Fact are necessary.

BASES OF APPEAL

This appeal has been taken from the order imposed by the

Administrative Law Judge. It is contended that: (1) the findings of fact and conclusions of law are in error and unsupported by the evidence.

APPEARANCE: Green, Lackey & Nusbaum, by Merritt W. Green, II

OPINION

I

During the presentation of the Coast Guard case a witness testified that upon boarding the W.W. HOLLOWAY, while it was tied up at a pier in Chicago, he noticed the lack of an endorsement for "Lake Michigan Waters" on Appellant's First Class Pilot License. Further testimony indicated that the witness had no knowledge of who maneuvered the vessel from Milwaukee to Chicago. The three documents submitted consisted of Appellant's license, excerpts from the vessel's log and a copy of the vessel's shipping articles.

An initial question arises as to whether Appellant was acting under the authority of his license at the time of the voyage in question. Section 5.01-35 of Title 46, Code of Federal Regulations, provides that:

"A person employed in the service of a vessel is considered to be acting under the authority of a license, certificate or document held by him either when the holding of such license, certificate or document is required by law or regulation or is required in fact as a condition of employment."

In the instant case no certificate of inspection for or description of the W.W. HOLLOWAY was introduced into evidence. Without such evidence no finding can be made that Appellant was required by law or regulation to have a license. Likewise, no evidence was produced respecting a requirement of holding the license as a "condition of employment." It is clear Appellant holds a license; however, that fact alone has not been held sufficient to establish the essentials of jurisdiction. See, e.g. Decisions on Appeal Nos. 2104, 2169.

Another omission in the Coast Guard case also appears to exist. Manning requirements for vessels on the Great Lakes (vessels inspected and certificated for "Great Lakes" routes only) are determined under the authority of R.S. 4463 (46 USC 222). Administrative practice has been to require the customary "master" and "three pilots" under the authority of the above statute and the three watch law (46 USC 673) without specifying any particular endorsement. Therefore the lack of an endorsement on Appellant's license was not a violation of the manning requirements as they

were probably recited in the vessel's certificate of inspection. Accordingly, a violation probably could not be found based solely on a comparison of the vessel's certificate of inspection and the vessel's shipping articles since there would be no variance between the two.

Given the nature of the charge and specification it would have been necessary for the Investigating Officer to establish that Appellant piloted the vessel on Lake Michigan when he, in fact, did not have the proper endorsement for those waters. Since no evidence was produced as to who controlled the vessel, it is conceivable that, with a proper management of watches, there was a pilot on watch with the required endorsement for all waters the vessel navigated.

CONCLUSION

Since jurisdiction in this case has not been established the charge and specification must be set aside.

ORDER

The order of the Administrative Law Judge dated at St. Louis, Missouri, on 28 January 1980, is VACATED. The charges are DISMISSED.

B. L. STABILE
Vice Admiral, U. S. Coast Guard
Vice Commandant

Signed at Washington, D.C., this 24 day of August 1982.